



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 10665-23
Ref: Signature Date

█
█
█

Dear █,

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 16 July 2024. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

The Army released you from active duty training with an Honorable character of service and were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 29 December 1988 to 15 August 1989 due to an expiration term of service.

On 31 May 1996, while stationed at █ a General Court-Martial convened and found you guilty of specified charges. The sentence was adjudged on 5 December 1996, and you were awarded reduction to E-1/PVT, forfeiture of all pay and allowances, and to be put to death. On 25 July 1998, the Convening Authority approved the sentence, except for the portion of the sentence calling for death.

On 3 April 1997, you signed a Fitness Report for the period of 5 March 1996 to 14 December 1996 while in a confinement status in the grade of Sergeant/E-5. This was a grade change report which stated, "[t]his is a not observed report. MRO was tried by a General Court-Martial between 961107 and 961205, with the following results: found guilty of violation of the UCMJ, Articles 80, 92, 118, 128 and 134. The sentence adjudged REDUCTION to E-1, forfeiture of all pay and allowances and to be put to death."

On 20 July 2011, ██████████ issued General Court-Martial Supplemental Order No. ██████████ stating, “[i]n the general court-martial case of [Subject ...], the approved sentence to be confined for the length of his natural life, to forfeit all pay and allowances, to be reduced to the pay grade of E-1, and to be discharged from the service with a dishonorable discharge, as promulgated in ██████████ General Court-Martial Order No. ██████████ (M), dated January 5, 2011, has been finally reviewed pursuant to Navy-Marine Corps Court of Criminal Appeals Order (██████████) and Instructions for Compliance with UCMJ Article 64 from the Office of the Judge Advocate General of the Navy. Having complied with all relevant law and regulations, the dishonorable discharge will be executed.”

You were discharged with a dishonorable character of service and were issued a DD Form 214 for the period of 4 January 1990 to 31 July 2012 due to a court-martial. Furthermore, block 29 (Dates of time lost during this period) listed (5927) 19960305-20120731.¹

On 6 October 2023, U.S. Department of the Treasury notified you that, “[t]he U.S. Department of the Treasury, Bureau of the Fiscal Service (Fiscal Service), applied all or part of your payment to delinquent debt that you owe. This action is authorized by federal law. Below is your payment information: Payment From: Internal Revenue Service Payee Name: [Subject] Original Payment: \$2026.32, Payment Date: 10/06/23, and Payment Type: CHECK.” Furthermore, they applied your payment to debt that you owe to the following agency. The Defense Finance and Accounting Service (DFAS), Indianapolis Center, DFAS-JAAC/IN.

On 11 April 2024, the DFAS notified the Board that, “[Subject] has a debt in our DDMS system that was originally for \$7,435.82 plus interest/penalties/admin fees of \$76.18. The member has paid \$2,004.52 towards the debt bringing their debt balance to the current amount of \$5,469.39 which was referred to the Treasury for collection. The member may owe more than the \$5,469.39 as the Treasury may charge additional fees. There is no debt documentation as the debt interfaced to our DDMS system. The member’s debt is stated as due to the entitlement of Base Pay being paid at the incorrect rate. When input was made to pay the member at the correct rate, the pay did not completely offset the debt for the incorrect payment the member received.”

You requested the cancellation of debt, the Board in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. You state that the DFAS told you that you were paid as a Staff Sergeant when you should have been paid as a Sergeant, and that you were never a Staff Sergeant. Additionally, you state that the DFAS told you that, “[you] owe the U.S.M.C. money, but [you have] been in prison all this time.” You provided no documentation from the DFAS detailing the reason for the debt, however the DFAS notified the Board that that the debt is due to the entitlement of basic pay being paid at the incorrect rate. There is no information regarding the period you were overpaid, and you did not provide any evidence to support these facts. The Board noted that it is possible that the payments were received prior to your confinement, however the burden is on you to demonstrate the existence of probable material error or injustice when applying to this Board. A thorough review of your naval record was conducted, and the Board found no evidence that you were ever promoted to Staff Sergeant, the highest rank you achieved was Sergeant. The Board

¹ A DD Form 215 (correction to the DD Form 214) was issued on 13 August 2012 which reflected aforementioned dates and information.

determined that if you were paid at the incorrect rate, you are not entitled to such pay, and any debt resulting from the overpayment is a valid debt and must be repaid.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

7/26/2024

